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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560				
03/12/2009				
EXAMINER				
PARKER, BRANDI P				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,210

Applicant(s)

DUBE ET AL.

Examiner

BRANDI P. PARKER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission has been entered.

Acknowledgements

2. The following is a Non-Final Office action in response to Applicant's Request for Continued Examination filed on 12/17/2008. Claims 1, 13-14, 17 and 18 have been amended, and claims 11 and 19 were cancelled.

Response to Applicant's Remarks

3. Applicant's arguments with respect to claims 1-10 and 12-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-16 and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular machine or apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

7. Claims 1 and 18 are directed towards a method of managing one or more computing resources and an article of manufacture created by the execution of computer implemented steps. As the claims are not sufficiently tied to an apparatus, such as a computer, and/or do not transform the underlying subject matter (from your claim) to a different state, the claimed method is non-statutory and therefore rejected under 35 U.S.C. 101.

8. Claims 2-16 are rejected for being dependent upon rejected claim 1.

Examiner's Notes

9. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-10 and 12, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6526392) in view of Laurent et al (US 2004/0249699).

12. With respect to claims 1, and 17-18, Dietrich teaches

a. obtaining data associated with at least one potential demand for use of the one or more resources (column/line 4/17-20, regarding customer forecasted demand);

b. generating a management model in accordance with at least a portion of the obtained data, wherein the management model is operative to determine an allocation of the one or more resources based on combinations of price levels and service levels that may be offered to one or more users of the one or more resources so as to attempt to satisfy at least one management goal

i. wherein the combinations are determined by computing a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, and wherein the set of prices and set of service levels are derived from: (i) levels associated with the one or more resources; (ii) historical demand data; and (iii) predicted demand data (column/line 4/27-40, regarding analyzing forecasted or historical demand for a profile of anticipated service activity);

- c. evaluating the satisfaction of the management goal for each combination associated with the management model (column/line 2/57-60, regarding the evaluation of the resource requirements using the service model);
- d. determining an optimal configuration of the one or more resources, in accordance with the management model; that maximizes the management goal, wherein the optimal configuration is determined by solving the management model using one of a linear programming solver and a nonlinear programming solver (column/line 8/8-21, regarding using linear programming for the optimal allocation method); and

Dietrich does not directly teach modulating combinations of price and service levels. However, Laurent teaches:

controlling a usage load level of the one or more resources by modulating combinations of price levels and service levels offered to the one ore more users of the one ore more resources (paragraph 0118, regarding price/service level combinations).

It would have been obvious to one of ordinary skill in the art to include the business system of Dietrich with the ability to teach modulating combinations of price

and service levels as taught by Laurent since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

The computing resource component is anticipated by Dietrich because a service activity can include the transmission of information over a network (column/line 3/6-10)

13. Regarding claim 2, Dietrich further teaches wherein the management model generating step further comprises determining the allocation also based on at least one of historical data and predicted data associated with a demand pattern (column/line 4/16-25, regarding forecasted demand)).

14. As to claim 3, Dietrich further wherein the management model generating step further comprises determining the allocation also based on at least one of historical data and predicted data associated with a resource usage level (column/line 7/55-61, regarding remaining resources or residual service network).

15. Regarding claim 4, Laurent further teaches wherein the management model generating step further comprises representing the at least one potential demand as one of a demand curve and a discrete choice model (paragraph 0100 and 0103).

16. With respect to claim 5, Dietrich further teaches wherein the management model generating step further comprises aggregating at least one of historical data and predicted data associated with a resource usage level (column/line 4/34-40, regarding customer profile including total and historical demand).

17. Regarding claims 6, 7 and 8, Dietrich further teaches wherein the management model generating step further comprises setting price levels and service levels to be offered to users based on at least one of current data and predicted data and wherein the at least one of current data and predicted data comprises at least one of demand data and resource data (column/line 2/45-3/3, regarding the yield managed service contract pricing system for setting prices current activity and usage by customers).

18. As to claim 9, Laurent further teaches wherein the setting step is also based on a maximum number of price-service-level combinations (paragraph 0118).

19. With respect to claim 10, Dietrich further teaches wherein the management model generating step further comprises evaluating a revenue value for each price-service-level combination (column/line 1/48-52, regarding net profitability).

20. Regarding claim 12, Dietrich further teaches wherein the management goal is at least one of: (i) achieving a revenue goal; (ii) increasing a market share; (iii) responding

to a competitor; and (iv) smoothing a demand pattern (column/line 9/63-10/2 regarding generating a pricing range based on competitors for a competitive bid).

21. As to claims 15 and 16, Dietrich teaches the method of claim 1, wherein the management model comprises a yield management model or revenue management model (column/line 1/48-52, regarding the yield managed contract pricing system that can manage overall net profitability or revenue).

22. Claims 13 and 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6526392) and Laurent et al (US 2004/0249699) in further view of Fong, et al, "Dynamic Resource Management in an E-Utility".

23. As to claims 13 and 14, Dietrich in view of Laurent teaches the method of claim 1. Dietrich in view of Laurent does not directly teach where the resource comprises an electronic utility. However, Fong, et al teaches wherein one or more computing resources comprise an electric utility.

It would have been obvious to one of ordinary skill in the art to include the business system of Dietrich and Laurent with the ability to teach resources comprising an electric utility as taught by Fong, et al since the claimed invention is merely a

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combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/
Examiner, Art Unit 3624

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624